

JEFFREY K. LEE (BAR NO. 212465)  
WILLIAM D. CONNELL (BAR NO. 89124)  
GCA LAW PARTNERS LLP  
1891 Landings Drive  
Mountain View, CA 94043  
Telephone: (650) 428-3900  
Facsimile: (650) 428-3901  
Email: jlee@gcalaw.com  
Email: bconnell@gcalaw.com

*Additional counsel of record listed below*

Attorneys for Plaintiffs HUMBOLDT BAYKEEPER and ECOLOGICAL RIGHTS FOUNDATION

LAWRENCE BAZEL (SBN 114641)  
MELANIE TANG (SBN 221264)  
BRISCOE IVESTER & BAZEL LLP  
155 Sansome Street, 7<sup>th</sup> Floor  
San Francisco, CA 94104  
Email: [lbazel@briscoelaw.net](mailto:lbazel@briscoelaw.net)

Attorneys for Defendants CUE VI, LLC and UNION PACIFIC RAILROAD COMPANY

CHRISTOPHER NEARY (SBN 69220)  
110 So. Main Street, #C  
Willits, CA 95490  
Email: [cjneary@pacific.net](mailto:cjneary@pacific.net)

Attorney for Defendant NORTH COAST RAILROAD AUTHORITY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HUMBOLDT BAYKEEPER, a program of  
Ecological Rights Foundation, and  
ECOLOGICAL RIGHTS FOUNDATION, a  
non-profit corporation,

Civil Case No.: C 06-02560 JSW WDB

**STIPULATED REQUEST TO VACATE  
AND CONTINUE PRETRIAL  
CONFERENCE AND ASSOCIATED  
DATES; [PROPOSED] ORDER**

**Plaintiffs,**

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, NORTH COAST RAILROAD AUTHORITY, a state agency, and CUE VI, LLC, an Alaska limited liability company.

## Defendants

Pretrial Conf.: August 18, 2008  
Time: 2:00 p.m.  
Place: Courtroom 2  
Judge: Honorable Jeffrey S. White

1 Plaintiffs Humboldt Baykeeper and Ecological Rights Foundation and Defendants Union  
 2 Pacific Railroad Company, CUE VI, LLC, and North Coast Railroad Authority (collectively, the  
 3 "Parties") file this motion to bring to the Court's attention a scheduling problem. The Court's  
 4 *Guidelines for Trial and Final Pretrial Conference in Civil Bench Cases* requires the parties to serve  
 5 motions in limine by July 21, 2008, serve oppositions to those motions by July 29, and by August 4  
 6 file a joint pretrial statement and other documents. However, until the Parties receive the Court's  
 7 ruling on the pending cross-motions for summary judgment, directed to all counts of Plaintiffs' Third  
 8 Amended Complaint, the Parties cannot know the issues that the Court's ruling may eliminate for  
 9 trial, and cannot prepare documents responsive to the Court's ruling. Submission of pretrial  
 10 documents prior to the Court's ruling is likely to be unnecessarily voluminous and may address  
 11 issues disposed of by the Court's ruling. The Parties are thus in need of the Court's ruling on the  
 12 cross-motions to prepare for trial.

13  
 14 Therefore, pursuant to Civil Local Rules 6-1(b) and 6-2, and this Court's Civil Standing  
 15 Order, ¶ 3, the Parties in the above-captioned case hereby stipulate and jointly request that this Court  
 16 issue an order vacating and continuing the August 18, 2008 Pretrial Conference and associated  
 17 deadlines.

18  
 19 Defendants request that the Court continue the Pretrial Conference until September 2, 2008  
 20 and oppose continuation of the September 15, 2008 Trial date.

21  
 22 Plaintiffs request that the Court continue the Pretrial Conference until a reasonable time after  
 23 the Court issues its decision on the Parties' pending motions for summary judgment and set a Case  
 24 Management Conference for August 18, 2008, or for 10 days after the Court rules on the Parties'  
 25 respective motions for summary judgment, whichever is sooner, for the purpose of resetting dates  
 26 and, as necessary, to clarify issues to be tried.

27  
 28 The parties jointly declare the following in support of this request:

1 WHEREAS, the Court's October 15, 2007 Scheduling Order set a Pretrial Conference for  
2 August 18, 2008 and a bench Trial date of September 15, 2008; and

3 WHEREAS, commencing on July 21, 2008 and prior to the August 18, 2008 Pretrial  
4 Conference, the parties must, *inter alia*, exchange, oppose and file their motions in limine for the  
5 Court's decision, submit a Final Pretrial Order for the Court's review, confer regarding trial exhibits  
6 and evidence issues, and file for the Court's review their respective Proposed Findings of Fact and  
7 Conclusions of Law with separate Trial Briefs; and

8 WHEREAS, the Court heard arguments on June 13, 2008 and presently has under submission  
9 Plaintiffs' and Defendants' respective motions for summary judgment on all three counts of  
10 Plaintiffs' Third Amended Complaint;

11 WHEREAS, the Court's rulings on these pending summary judgment motions may moot  
12 and/or narrow claims, issues, evidence, and disputes for trial; and,

13 WHEREAS, consequently, the Court's rulings on the pending summary judgment motions  
14 may significantly modify the scope, volume, and content of the parties' respective Pretrial  
15 Conference filings and motions, as identified above, due to be considered and decided by the Court;  
16 and

17 WHEREAS, the Parties believe that it would best serve judicial economy for this Court to  
18 issue the requested Order; and

19 WHEREAS, the Parties have conferred and determined that the requested Order would be in  
20 the agreed best interests of the Parties and have a beneficial effect on the narrowing of issues and the  
21 efficient trial of this case; and

22 WHEREAS, the Parties reserve their respective rights to move to limit, exclude and  
23 otherwise object to evidence and to withdraw, modify, and otherwise address such existing motions  
24 and objections as warranted by any orders of this Court; and

1 WHEREAS, the Parties have sought three previous modifications to the deadlines in this  
2 case and the Court upon its own motion has modified the deadlines twice, including continuing the  
3 hearing date for the Parties' summary judgment motions to June 13, 2008;

4 WHEREFORE Plaintiffs and Defendants hereby jointly request that the Court issue an order  
5 vacating and continuing the August 18, 2008 Pretrial Conference and associated deadlines.  
6

7 Defendants request that the Court continue the Pretrial Conference until September 2, 2008  
8 and oppose continuation of the September 15, 2008 Trial date.

9 Plaintiffs request that the Court continue the Pretrial Conference until a reasonable time after  
10 the Court issues its decision on the Parties' pending motions for summary judgment and set a Case  
11 Management Conference for August 18, 2008, or for 10 days after the Court rules on the Parties'  
12 respective motions for summary judgment, whichever is sooner, for the purpose of resetting dates  
13 and, as necessary, to clarify issues to be tried.

14 Dated: July 16, 2008

15 Respectfully submitted,

16 JEFFREY K. LEE, CA Bar No. 212465  
17 WILLIAM D. CONNELL, CA Bar No. 160729  
18 GCA LAW PARTNERS LLP  
19 1891 Landings Drive  
20 Mountain View, CA 94043  
21 Phone No.: (650) 428-3900  
22 Fax No.: (650) 428-3901  
23 Email: jlee@gcalaw.com  
24 Email: bconnell@gcalaw.com

25 By: /s/ Jeffrey K. Lee.

26 Layne Friedrich (Bar No. 195431)  
27 Daniel Cooper (Bar No. 153576)  
Drevet Hunt (Bar No. 240487)  
Lawyers for Clean Water, Inc.  
1004 O'Reilly Avenue  
San Francisco, California 94129  
Telephone: (415) 440-6520  
Facsimile: (415) 440-4155  
Email: layne@lawyersforcleanwater.com

1 Michelle Smith (Bar No. 233515)  
2 Humboldt Baykeeper  
3 217 E Street  
4 Eureka, CA 95501  
5 Telephone: (707) 268-0665  
Facsimile: (707) 268-8901  
Email: michelle@humboldtbaykeeper.org

6 Fredric Evenson (Bar No. 198059)  
7 Law Offices of Fredric Evenson  
William Verick (Bar No. 140972)  
8 Klamath Environmental Law Center  
424 First Street  
Eureka, CA 95501  
Telephone: (707) 268-8900  
Facsimile: (707) 268-8901  
Email: ecorights@earthlink.net

12 Attorneys for Plaintiffs  
HUMBOLDT BAYKEEPER and ECOLOGICAL  
13 RIGHTS FOUNDATION

14  
15 Dated: July 16, 2008

LAWRENCE BAZEL, ESQ.  
MELANIE TANG, ESQ.  
BRISCOE IVESTER & BAZEL LLP  
155 Sansome Street, 7<sup>th</sup> Floor  
San Francisco, CA 94104  
Email: lbazel@briscoelaw.net  
Email: mtang@briscoelaw.net

19 By: /s/ Lawrence Bazel (by permission).  
20 Attorneys for Defendants  
21 UNION PACIFIC RAILROAD COMPANY and  
CUE VI, LLC

22  
23 Dated: July 17, 2008

CHRISTOPHER NEARY, ESQ.  
110 So. Main Street, #C  
Willits, CA 95490  
Email: cjneary@pacific.net

26 By: /s/ Christopher Neary (by permission).  
27 Attorney for Defendant  
NORTH COAST RAILROAD AUTHORITY

## ATTESTATION

I, Jeffrey K. Lee, am counsel for Plaintiffs and the registered ECF user whose username and password are being used to file this Stipulated Request to Vacate and Continue Pretrial Conference and Associated Dates and [Proposed] Order. In compliance with General Order 45 X.B, I hereby attest that the above-identified counsel for Defendants concurred in this filing.

Dated: July 17, 2008

Respectfully submitted,

By: /s/ Jeffrey K. Lee

1  
2                   **[PROPOSED] ORDER**  
3

4                   After consideration of the Parties' Stipulated Request to Vacate and Continue Pretrial  
5 Conference and Associated Dates and for good cause appearing:  
6

7                   PURSUANT TO STIPULATION, IT IS SO ORDERED that the Court (1) vacates and  
8 continues the August 18, 2008 Pretrial Conference and associated deadlines; (2) ~~resets the Pretrial~~  
9 ~~Conference for~~  at        a.m./p.m. and vacated the trial date. The  
Court will reset these dates, if necessary, in its order resoloving the parties' cross-motions for  
summary judgment.

10                  Dated: July 18, 2008

11                    
12                  \_\_\_\_\_  
13                  JEFFREY S. WHITE  
14                  UNITED STATES DISTRICT JUDGE